

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KENT GARVEY, ON BEHALF OF
HIMSELF AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

v.

JAMES ARKOOSH, SAMUEL
BELZBERG, PETER KLEIN AND
DIOMED HOLDINGS, INC.,

Defendant.

CIVIL ACTION NO. 1:04CV10438
RGS

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR LEAVE
TO FILE AN EXTENDED BRIEF AND TO FILE A REPLY BRIEF**

Defendants Diomed Holdings, Inc. ("Diomed") and James Arkoosh ("Arkoosh") (collectively, "Defendants"), by counsel, state as follows in support of their Motion for Leave to File An Extended Brief and to File a Reply Brief.

This is a putative class action lawsuit brought pursuant to the Securities Exchange Act of 1934 against Diomed, a publicly traded company based in Massachusetts, and its former Chairman, James Arkoosh. The Amended Complaint alleges claims under Sections 10(b) and 20(a) of the Exchange Act. Specifically, Plaintiffs seek to hold Defendants liable for failing to disclose payments to third-party analysts in violation of Section 10(b) and Mr. Arkoosh for controlling person liability under Section 20(a). The Amended Complaint is 20 pages in length, contains 75 separate paragraphs and has eight exhibits totaling 47 pages.

Defendants intend to file a consolidated motion to dismiss and memorandum in support pursuant to Federal Rule of Civil Procedure 12(b)(6). Defendants will argue that the Amended Complaint fails to satisfy the legal requirements of Sections 10(b) and 20(a) as well as the heightened pleading requirements of the Private Securities Litigation Reform Act of 1995.

Because (a) there are several independent arguments on which Defendants will seek dismissal of the Amended Complaint and (b) Defendants will be filing a single consolidated brief on behalf of Defendant Diomed and Defendant Arkoosh, Defendants believe more than the 20 pages provided for in Local Rule 7.1(B)(4) are necessary. Accordingly, Defendants respectfully request leave to file a longer brief, not to exceed 30 pages in length.¹ For the same reasons, Defendants also request leave to file a reply brief pursuant to Local Rule 7.1(B)(3).

Defendants believe that filing one brief on behalf of both defendants addressing their grounds for dismissal will be more efficient and convenient for the Court and the parties, rather than two separate briefs being filed on behalf of each of the defendants.

WHEREFORE, Defendants respectfully request that they be permitted to file a brief in support of their motion to dismiss that does not exceed 30 pages in length and that they be permitted to file a reply brief.

Respectfully submitted,

JAMES ARKOOSH and
DIOMED HOLDINGS, INC.

By Counsel,

/s/ James J. Foster

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¹ Plaintiffs reserve their right, if Defendants' Motion is granted, to file a motion to extend their response brief to a length not exceeding 30 pages. Should Plaintiffs seek such relief, Defendants will not object.

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Counsel for Defendants

CERTIFICATE OF SERVICE

I certify that a true copy of the above document was served by first-class mail to:

Laurence Rosen, Esq.
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counsel for Plaintiffs, on October 1, 2004.

/s/ James J. Foster